IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

CRL.A.No. 1555 of 2006()

CC.1640/2004 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM

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APPELLANT: COMPLAINANT

MATHEWS THOMAS, AGED 50,
S/O.M.K.THOMAS CLERY, RESIDING AT MULLIKKATTU
HOUSE, PUTHUR P.O., KOTTARAKKARA, KOLLAM DISTRICT.

BY ADV. SRI.R.ARUN

RESPONDENTS: ACCUSED/STATE

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1. WILSON THOMAS, KULANGARA, MULAVANA P.O.,
KUNDARA, KOLLAM DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MOHAMMED-R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 1555 OF 2006

Dated this the 21st day of August, 2007

JUDGMENT

The appellant is the complainant in C.C. No.1640 of 2004 on the file of the Judicial First Class Magistrate's Court I, Kollam. By the impugned order, the trial court acquitted the accused - first respondent herein under Section 256(1) Cr.P.C. This Court admitted the appeal and issued notice to the first respondent.

2. Learned counsel appearing the for the appellant submits that the appellant could not appear before the court below on the date of posting of the case due to the mistake in noting the posting date. The reason stated for non appearance of the appellant - complainant is not very convincing. It is seen that the impugned order is not in accordance with the principles laid down by this Court in the decisions reported in **Don Bosco v. Partech Computers, 2005(2) K.L.T. 1003** and **G.F.S. Chit & Loans (p) Ltd. v. Rajesh, 2006(3) K.L.T. 825.** In the above judgments, this Court had categorically held that unmerited disposals stake the public

confidence in the system of administration of justice and that the courts should apply judicial mind while passing an order under Section 256(1) Cr.P.C. The same view was taken by the Apex Court in the decision reported in **Associated Cement Co.Ltd. v. Keshvanand, 1998(1) K.L.T. 179 (SC)**. In the light of the principles laid down in the decisions referred to above, this Court is of the view that the impugned order is liable to be set aside. The impugned order is accordingly set aside and the matter is remanded to the court below for fresh disposal from the stage at which the impugned order was passed.

The Crl. Appeal is allowed by way of remand. The appellant shall appear before the court below on 29.9.2007. On appearance of the appellant, notice shall be issued to the accused - first respondent.

(K.THANKAPPAN, JUDGE)

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